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## Situating the Individual within Climate Law

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# STELLINGEN

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## Situating the Individual within Climate Law: *A Behavioural Law & Economics Approach to End-user Emissions Trading*

1. The desirability of an end-user emissions trading scheme requires the assessment of public responsiveness, political acceptance, the role of European regulation and institutional framework, and the proportionality of such a policy choice.
2. Results of piecemeal laboratory experiments on the properties of incentives to influence individual climate change behaviour cannot be abstracted into policy conclusions without undertaking analytical exercises on the inferences for policy-design that can be made from empirical studies.
3. Knowing about the findings of behavioural economics does not enable individuals to overcome them and become rational. Behavioural Law and Economics (BLE) is not about making individuals or households into firms.
4. BLE cannot answer how an emissions trading scheme could be designed effectively for individuals. On the contrary, behavioural economics indicates that individuals cannot be expected to behave rationally, and therefore based on this line of thinking, emissions trading would be ill-suited to individuals.
5. If individuals cannot meaningfully engage in strategic behaviour regarding distribution of responsibility for climate change, then there is an incentive for institutions that can engage in strategic behaviour to shift their burdens onto individuals.
6. BLE can be useful in studying political acceptance by relaxing the assumption that regulators are rational; BLE points to the possibility of discursive capture, where regulatory decision-making is itself not rational.

7. The European Union Emissions Trading Scheme (EU ETS) is a policy instrument that assigns liability for mitigation, combined with a market mechanism that values the acceptable amount of emissions through price discovery. It is based on the assignment of liability to industrial actors, and their ability as organised economic actors to respond to external economic incentives. Both these properties would be difficult to transpose onto an emissions trading scheme for individuals or households.
8. Private parties do not enjoy an inalienable entitlement to pollute, but could be said to enjoy an entitlement to be free from hazardous climate harm. Individuals and households may be required to bear burdens such as costs that are passed through, but may not be required to bear the burden of liability, or be required to behave like firms.
9. The end-user with respect to regulation on reduction of emissions need not be an individual or a household; rather the 'end-user' should be conceptualised as the agent who bears the least costs and enjoys the most distributional advantages.
10. With respect to the proportionality of an emissions trading scheme for individuals and households, a qualitative balancing exercise may be conducted. In this regard, the costs of infringing on the freedom of individuals and households, bargaining costs borne by non-market actors in a trading scheme, the Double Counting problem in implementation, and the cost of enforcing such a scheme are difficult to reduce or overcome, not least because some of them are incommensurable. Given these costs, the benefits of such a scheme –capping uncapped sectors, stimulating energy efficiency, and arresting carbon leakage – need to be pursued through other means.